

<sup>1</sup> Docket No. 07-1344 (issued February 19, 2008).

surgeon. The Board also found that appellant provided sufficient reason to require the Office to demonstrate that it properly followed its selection procedures. While there was no indication that the Office bypassed any physician on the Physicians Directory System (PDS), the Board found that the Office had an obligation to verify that it selected Dr. Sabin in a fair and unbiased manner. The Board set aside the Office's February 1, 2007 decision denying an additional schedule award and remanded the case for further development.<sup>2</sup>

On remand, the Office requested the impartial medical specialist bypass history from the National Office. After checking the database, it learned that no physician was bypassed in Dr. Sabin's selection.

In a decision dated April 8, 2008, the Office explained its selection procedures and the nature of the PDS. It then explained how it selected Dr. Sabin:

"In your case, the Office entered your zip code in the PDS system and there were no doctors available in the PDS in your particular zip code. The medical advis[e]r, following the correct procedure then responded to the program and indicated that the next available physician closest to your original zip code should be selected, and the first doctor that came up was Dr. Sabin."

The Office found that Dr. Sabin's selection was proper and that his report would remain the weight of the medical evidence.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>3</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>4</sup>

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>5</sup> When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving

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<sup>2</sup> The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference. Appellant, a letter carrier, sustained several injuries in the performance of duty. She moved a tray of letters, she fell and hit her left shoulder on a vehicle door, and she performed continuous lifting, carrying and walking as well as repetitive duties. The Office accepted a left wrist ganglion, left shoulder contusion and strain, aggravation of myalgia and myositis and right carpal tunnel syndrome. Appellant received schedule awards totaling 20 percent for her left upper extremity. A conflict arose as to whether her impairment was greater.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> 5 U.S.C. § 8123(a).

the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>6</sup>

### ANALYSIS

Appellant's representative does not argue the substance of the impartial medical specialist's report. He again questions the selection. But when the Office entered appellant's zip code into the PDS, no doctors were available. The Office then asked the system to find the next available physician closest to appellant's zip code, and the first doctor identified was Dr. Sabin. The Office bypassed no one in the PDS to get to him. The Board therefore finds that the Office has sufficiently shown that it properly followed its selection procedures.

The PDS does not list every physician in the American Board of Medical Specialties (ABMS) database. Physicians in the ABMS database may be unwilling to participate in the PDS program. And the Office may suspend physicians from the PDS for a number of reasons. Because the PDS thus varies from the ABMS database, merely listing ABMS physicians who were not selected and who were closer to the claimant's zip code does not establish an improper selection.

On March 29, 2004 Dr. Sabin related appellant's history and complaints and findings on physical examination. He reviewed appellant's medical record and the statement of accepted facts. Dr. Sabin found impairments of seven percent due to loss of left shoulder flexion,<sup>7</sup> two percent due to loss of extension,<sup>8</sup> four percent due to loss of abduction,<sup>9</sup> and two percent due to loss of internal rotation.<sup>10</sup> He also found impairments of two percent for loss of left wrist flexion,<sup>11</sup> two percent for loss of extension,<sup>12</sup> and one percent for loss of ulnar deviation.<sup>13</sup> The 15 percent regional impairment of the shoulder combines with the 5 percent regional impairment of the wrist for 19 percent total impairment of the left upper extremity.<sup>14</sup>

The Board finds that Dr. Sabin's March 29, 2004 examination was based on a proper background and was sufficiently rationalized that it is entitled to special weight in resolving the extent of appellant's impairment. Because the weight of the medical evidence fails to establish

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<sup>6</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>7</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* 476 (5<sup>th</sup> ed. 2001) (Figure 16-40, 80 degrees).

<sup>8</sup> *Id.* at Figure 16-40 (20 degrees).

<sup>9</sup> *Id.* at 477 (Table 16-43, 90 degrees).

<sup>10</sup> *Id.* at 479 (Table 16-46, 60 degrees).

<sup>11</sup> *Id.* at 467 (Table 16-28, 50 degrees).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 469 (Table 16-31, 25 degrees).

<sup>14</sup> *Id.* at 604 (Combined Values Chart).

that appellant has more than 20 percent impairment of her left upper extremity, the Board will affirm the Office's April 8, 2008 decision.

**CONCLUSION**

The Board finds that appellant has 20 percent permanent impairment of her left upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board